HANIZAN CHE MAT & ANOR.

v.

THE COLLECTOR OF LAND REVENUE, KOTA BHARU, KELANTAN

HIGH COURT MALAYA, KOTA BHARU
IDRIS YUSOFF J
[ORIGINATING SUMMONS NO. 24-172-1989]
13 JANUARY 1990

LAND LAW: *Acquisition - Accepting award under protest - Service of Form H - Manner of service - Appeal to the Court - Land Acquisition Act 1960, ss. 12(1), 14(1), 38(3)(a), 38(3)(b), 53(2).*

The applicants were the registered owners of three pieces of land in Kota Bharu. The land was acquired by the authority under the Land Acquisition Act 1960 (the Act). Two enquiries were held, on 8 October 1988 and 26 October 1988. At the end of both enquiries the respondent made separate awards, which were written in Form G. Both applicants refused to accept service of Form H. Both applicants then authorised one N to pursue the matter further on their behalf.

On 18 January 1989, N went to the respondent's office and signed the Form H under protest. Both the applicants were advised by the respondent to file the objections in Form N within six weeks of the award for the purpose of referring the matter to the High Court but the advice was ignored. On 11 February 1989 the respondent informed the applicants that the time to appeal to the Court under s. 38 of the Act has expired. The applicants applied to the Court for enlargement of time to file their objections against the awards made by the respondent.

The applicants contended that Form H was served on each of them on 18 January 1989 and that the purported service made at the conclusion of the respective enquiries were improper and of no effect under s. 53(2) of the Act.

Held:

[1] Under s. 14 of the Act Form G is only intended to be used by the Collector; it is nowhere stated in the Act requiring it to be served on the persons interested in the acquisition proceedings;

[2] Under s. 16 of the Act Form H is a "notice of award and offer of compensation"; since it constitutes an offer, there ought to be an acceptance or otherwise (rejection thereof).

[3] Form H need to be prepared and served on persons interested immediately after the conclusion of the enquiry. It has to await the preparation and filing of Form G. It may be prepared subsequently;

[4] In cases where parties refused to sign the acknowledgment of Form H, service of the award can be effected by resorting to s. 53(2) of the Act. Upon such steps being taken, Form H is deemed to have been properly served.

[5] Since no evidence was adduced as to show compliance with s. 53(2) of the Act, the Court held that there was no proper service of Form H on 8 October 1988 and 26 October 1988 and that being so service was only effected on 18 January 1989. The applicants were therefore allowed to file their objections within three weeks of the date of the judgment.

[Applicant's application allowed.]

Legislation referred to:
Land Acquisition Act 1960, ss. 12(1), 14(1), 16, 38, (3)(a), (3)(b), 53(2)

For the Plaintiffs/Applicants - Wan Mansor bin Dato' Wan Mohamed; M/s. Lua & Mansor
For the Defendant/Respondent - Raus bin Mohd. Sharif, State Legal Adviser

JUDGMENT

Idris Yusoff J:

The two plaintiffs whom I refer as the 1st and 2nd applicants by an *ex parte* originating summons applied to the Court for enlargement of time to file their objections against the awards made by the Collector of land Revenue Kota Bharu, the respondent. The application which was supported by their joint affidavit was also served on the respondent. Certain allegations of fact were raised in the joint affidavit but these allegations were specifically traversed by the respondent in the affidavit-in-reply.

When the application came up before me Counsel for the applicants applied to treat the *ex parte* originating summons as *inter partes* notice of motion which application was acceded to by the Court after receiving no objection from the State Legal Adviser who appeared for the respondent.

It was also indicated by the applicants' Counsel that after perusal of the affidavit-in-reply he conceded to the facts as affirmed by the respondent but nevertheless would rely his submission purely on point of law.

The facts as can be marshalled from the affidavits are that the 1st and 2nd applicants were before the acquisition the registered owners of Lot 16 (GN 5253) section 22 Kota Bharu town and Lots 17 and 18 (GN 8254 and GN 8255) of section 22 Kota Bharu town respectively. The said three pieces of land were acquired as part of Kota Darulnaim office complex and all the prerequisites as required by the Land Acquisition Act 1960 prior to the holding of the enquiry under s. 12 of the Act had been duly complied with.

It appears that two separate enquiries were held - one on 18 October 1988 for Lots 17 and 18 which was attended by the 2nd applicant and one Nasir bin Abd Rahman while another on 26 October 1988 for Lot 16 which was attended by the 1st applicant, Nasir bin Abd. Rahman and one Mohamed Apandi bin Che Ishak, a representative of Southern Banking Berhad, Kota Bharu to which bank the land was charged at the material time.

At the conclusion of the enquiry held on 18 October 1988 the respondent made separate written awards amounting to RM88,914 and RM119,040.60 respectively for Lots 17 and 18 in Form G which was exhibited as 'RH1'. Soonafter he also prepared Form H and served it on the 2nd applicant. However, the 2nd applicant refused to acknowledge receipt of Form H on the ground that she refused to accept the award.

Similarly at the conclusion of the enquiry held on 26 October 1988 the respondent made a written award of RM90,500.20 in respect of Lot 16 in Form G exhibited as 'RH2'. Form H was also prepared and served on the 1st applicant. Likewise the 1st applicant refused to acknowledge receipt of Form H on similar ground as advanced by the 2nd applicant. Both applicants also authorised Nasir bin Abd. Rahman to attend to this matter and to appear on their behalf in case of need.

On 18 January 1989 Nasir bin Abd. Rahman went to the office of the respondent and signed the respective Form H on behalf of both applicants accepting the award under protest. It is however not clear what really prompted him to appear before the collector on 18 January - whether he went on his own accord or was he called by the respondent? However, for the purpose of this application it makes no difference as to who initiated the move.

It was also affirmed by the respondent that at the time he served Forms H on both applicants he also advised them and also Nasir bin Abd. Rahman to file the objections in Form N within six weeks from the date of the award for the purpose of referring the matter to High Court but such advice went unheeded.

It was contended by the applicants' Counsel that the respective Form H was only served on both applicants on 18 January 1989 and that services purported to have been done at the conclusion of the respective enquiries were improper and of no effect. In pursuing such contention Counsel relied on s. 53(2) of the Land Acquisition Act 1960 and went on to submit that there was no evidence to show or suggest compliance with that section. As a consequence thereof para. 2 of the letter written by the respondent dated 11 February 1989 which was in the following words:

> Dimaklumkan jua tempoh untuk tuan tanah membuat rayuan kepada Mahkamah mengikut s. 38 Akta Pengambilan Tanah 1960 telahpun luput.

was untenable.

The State Legal Adviser however argued that since it was no longer in dispute that the applicants were present at the respective enquiries, s. 38(3)(a) was therefore relevant and that the applicants had six weeks from the dates of the award to file their objections which were to be made by written applications in Form N and since the time limited for filing their objections had expired and there did not seem to exist any such special circumstances the application for enlargement of time should be refused. He however conceded that s. 38(3)(b) would apply were both applicants not present at the respective enquiries.

Section 12(1) says on the appointed day, the collector shall make full enquiry into the value of the lands to be acquired and shall also as soon as possible assess the amount of compensation in accordance with the consideration set out in First Schedule. Subsection 3 empowers the Collector for sufficient cause to postpone the enquiry or adjourn any hearing of enquiry from time to time.

Section 14(1) deals with the obligations of the Collector at the conclusion of the enquiry. It requires the Collector to prepare a written award in Form G and such award shall be final and conclusive evidence of the area and value of the land once it is filed in the collector's office irrespective of whether the person interested has or has not appeared at the enquiry.

A look at Form G and reading it in the light of s. 14 would appear to me that Form G is only intended for use of the Collector as it is no where stated in the Act requiring it to be served on the person interested. Before Form G is registered it would appear that the Collector is at liberty for some reasons to amend the award.

Then we have s. 16 of which subsection (1) mandatorily requires the Collector on making any award under s. 14(1) to prepare and serve on each person interested a notice in Form H which notice shall include an extract from the Collector's written award in Form G. Form H is a "notice of award and offer of compensation" and it is through Form H that the award of the Collector is communicated to the person interested. Since it constitutes an offer obviously

there ought to be an acceptance or otherwise of such offer which would normally be signified by deleting where appropriate, the already prepared reply at the foot of the form. While it is true that both applicants were present at the respective enquiries but in the circumstances could they be deemed to have been served with Form H? To my mind Form H need not necessarily be required to be prepared and served on person interested immediately after the conclusion of the enquiry. It has to first await the preparation and filing of Form G. It may be prepared subsequently as was done in the case of *Hong Bee Realty Ltd. v. Collector of Land Revenue* [1972] 1 MLJ 125; though I gather it is the standard practice that when the person interested appears at the enquiry the Collector at the conclusion thereof and after preparing Form G would prepare and serve on the said person Form H and obtain his acknowledgment of receipt. And in cases where the person interested disagrees with the quantum of the award he would acknowledge receipt of the offer under protest and would proceed to file his objection within the six week period. But there might be instances where the persons interested were so disgusted and unhappy with the awards (which could have originated from their objection to the acquisition) that out of exasperation they simply refused to sign the acknowledgments as in the instant case. In the situation thus created I am of the view that the Collector is not without any recourse for there is a provision in the Act to get over such contingency, such as the one provided in s. 53(2) of the Land Acquisition Act.

As in the present case what was expected of the Collector in the circumstances was to effect service by resorting to s. 53(2) that is, by fixing a copy of Form H upon the outer doors of the buildings in which the applicants ordinarily dwell or carry on business and also on any public notice board in the town or Mukim in which the applicants usually reside. Having taken such steps the Collector or the serving officer should enter on the originals of the document served or on office copies thereof or in the book to be kept for the purpose a statement of time, place and manner in which services were effected and accordingly sign such statement. Upon such steps being taken Form H would then be deemed to have been served on the applicants with retrospective effect to 18 October 1988 and 26 October 1988 as the case may be. However, since no evidence was adduced to show compliance with such section, I hold that there was no proper service of Form H on the applicants on those two dates and I further hold that service was only effected on them on 18 January 1989. However taking into consideration the respondent's letter of 11 February 1989, which in effect denied the right of the applicants to file their objections I have to allow the application and direct that the applicants do file their objections in proper form within three weeks from the date hereof. I make no order as to costs since it was not so prayed.

Also found at [1991] 1 CLJ 113